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FILED

DISTRICT COURT OF GUAM

MAR - 2 2005

MARY L.M. MORAN
CLERK OF COURT

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IN THE DISTRICT COURT OF GUAM
HAGÁTÑA, GUAM

JULIE BABAUTA SANTOS, individually
and on behalf of all those similarly situated,

Petitioner,

vs.

FELIX P. CAMACHO, Governor of Guam;
ART ILAGAN, Director of Department of
Revenue and Taxation; LOURDES M.
PEREZ, Director of Department of
Administration; DOUGLAS B. MOYLAN,
Attorney General of Guam; and
GOVERNMENT OF GUAM,

Respondents.

Civil Case No. 04-00006

**OPPOSITION OF GOVGUAM TO
GOVERNOR'S MOTION TO VACATE
THE STIPULATED ORDER OF JUNE 17,
2004 PRELIMINARILY APPROVING
SETTLEMENT**

Respondent Government of Guam respectively submits the following Opposition to the motion of Respondent Governor of Guam to vacate the stipulated order of June 17, 2004 preliminarily approving the Settlement Agreement filed in this case.

In its order dated February 9, 2005, the Court removed the Attorney General of Guam as attorney-of-record in this case for Respondent Governor of Guam (the "Governor"), Respondent

ORIGINAL

1 Director of the Department of Revenue and Taxation and Respondent Director of the Department
2 of Administration (collectively the "Directors"). The Court ruled that the Organic Act of Guam
3 vests the Governor with the power to administer and enforce the Guam territorial income tax and to
4 select his own attorneys in this case to represent himself and his Directors. Subsequently, the
5 Governor and his Directors moved the Court to disqualify the Attorney General from representing
6 Respondent Government of Guam ("GovGuam") due to an alleged conflict of interest. This
7 motion is pending decision by the Court.

8
9 Based on the above posture of this case, it is apparent that the dispute framed by the present
10 motion of the Governor, relating to the June 17, 2004 stipulated order preliminarily approving the
11 Settlement Agreement, is between Petitioner and the Governor. Petitioner bears the primary
12 responsibility of defending the June 17, 2004 stipulated order against the Governor's motion to
13 vacate the same. Nonetheless, GovGuam offers the following points for consideration by the
14 Court.

15 The Governor has failed in his Memorandum of Points and Authorities to supply the Court
16 with any procedural basis for his motion to vacate. The Governor has completely ignored the
17 existence and applicability of Rule 60(b) of the Federal Rules of Civil Procedure ("FRCP").
18 Perhaps, it is because FRCP 60(b) does not provide him with any succor for his motion to vacate.
19 FRCP 60(b) provides in relevant part as follows:

20
21 On motion and upon such terms as are just, the court may relieve a party or a
22 party's legal representative from a final judgment, order, or proceeding for the
23 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2)
24 newly discovered evidence which by due diligence could not have been discovered
25 in time for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated
intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4)
the judgment is void; (5) the judgment has been satisfied, released, or discharged, or
a prior judgment upon which it is based has been reversed or otherwise vacated, or it

1 is no longer equitable that the judgment should have prospective application; or (6)
2 any other reason justifying relief from the operation of the judgment. The motion
3 shall be made within a reasonable time, and for reasons (1), (2), and (3) not more
4 than one year after the judgment, order, or proceeding was entered or taken.

5 Since the Governor has not cited and discussed FRCP 60(b), he has not identified which
6 provision of FRCP 60(b), if any, serves as the basis for his motion to vacate the June 17, 2004
7 stipulated order. Neither the Court nor GovGuam should have to guess which provision is
8 applicable. For this reason alone, the Governor's motion to vacate should be denied.

9 Significantly, the Governor has not complied with the requirement of FRCP 60(b) that a
10 motion to vacate "shall be made within a reasonable time". Although the Governor was off-island
11 when the Settlement Agreement was signed, he was on-island when the settlement conference was
12 held by the Court and the stipulated order preliminarily approving the Settlement Agreement was
13 entered by the Court on June 17, 2004. The Governor could have derailed the process at that time
14 by having his attorneys appear in Court and protest the Settlement Agreement. He did not because
15 he supported the Settlement Agreement. Moreover, within a month thereafter, the Governor
16 caused the sum of \$3,000,000 to be allocated from GovGuam funds as the first installment required
17 by the Settlement Agreement. If he had disagreed with the Settlement Agreement and believed
18 that the stipulated order approving the Settlement Agreement should have been vacated, he could
19 have refused to authorize the \$3,000,000 allocation, and filed a motion in Court to vacate the
20 stipulated order. He did not because he approved of the Settlement Agreement.

21 It was not until September 2004 that the Governor apparently changed his mind about the
22 Settlement Agreement and in correspondence to the Attorney General's Office indicated that he no
23 longer supported it. But, he did not file a motion at that time to vacate the stipulated order
24 preliminarily approving the Settlement Agreement. The Governor's motion to vacate the June 17,
25

1 2004 stipulated order was made in February 2005, eight (8) months after the stipulated order was
2 entered by the Court. The Governor has offered no explanation of his dilatoriness in filing the
3 motion to vacate the June 17, 2004 stipulated order.

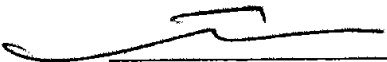
4 The Governor complains that the Settlement Agreement was signed while he was off-
5 island, by the then Acting Governor, who is his Lt. Governor, and his Directors. But, why is this
6 fact relevant? No where in his Memorandum of Points and Authorities is it suggested that the then
7 Acting Governor or the Directors lacked the power to sign the Settlement Agreement on behalf of
8 the Administration. If the Governor now has a complaint about the Settlement Agreement and the
9 stipulated order preliminarily approving the same, his complaint is with his Lt. Governor and his
10 Directors for signing the Settlement Agreement and not with GovGuam or the Attorney General of
11 Guam. This is a political matter and not a legal matter.

13 Finally, it is noteworthy that the Governor has not brought a motion to vacate the
14 Settlement Agreement itself. His motion is directed only at the stipulated order preliminarily
15 approving the Settlement Agreement. Thus, if the Governor's motion to vacate the stipulated order
16 were to be granted, the Settlement Agreement would still be in effect.

17 The Governor's motion to vacate the June 17, 2004 stipulation should be denied.

18 **DATED:** March 2, 2005.

19
20 OFFICE OF THE ATTORNEY GENERAL
21 **Douglas B. Moylan, Attorney General**

22 
23 Stephen A. Cohen
24 Robert M. Weinberg
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Attorneys for Respondent Government of Guam

1 **CERTIFICATE OF SERVICE**

2 This is to certify that I have this day caused the within document to be served on the
3 opposing parties in this case by having true and correct copies of the same hand delivered to the
4 following attorneys:
5

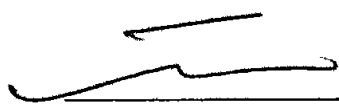
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16 DATED: March 2, 2005.
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18 
19 _____
20 Stephen A. Cohen
Assistant Attorney General